

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
CONSUMERS ENERGY COMPANY for)	
authorization to reconcile its EO plan costs)	Case No. U-16302
associated with the plan approved in)	
Case No. U-15805.)	
_____)	

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on March 31, 2011.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before April 15, 2011, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before April 25, 2011. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

Mark E. Cummins
Administrative Law Judge

March 31, 2011
Lansing, Michigan

STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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PROPOSAL FOR DECISION

I.

BACKGROUND AND HISTORY OF PROCEEDINGS

On February 17, 2009, Consumers Energy Company (Consumers) filed a combined application in Cases Nos. U-15805 and U-15889 seeking approval of a renewable energy plan (REP) for its electric division, as well as energy optimization (EO) plans for both its electric and gas divisions, all pursuant to 2008 PA 295, MCL 460.1001 et seq. (Act 295). On May 26, 2009, the Commission issued an order in these combined cases by which it (1) approved Consumers' proposed REP, albeit subject to the utility's agreement to implement certain changes to the plan, (2) approved the company's gas and electric EO plans, and (3) directed the parties to file new proposals regarding the structure of any incentive mechanism to be used to reward Consumers for exceeding the minimum statutory targets for energy savings produced by its EO operations. The Commission subsequently issued an order approving just such a financial incentive mechanism in its September 29, 2010 order in consolidated

Cases No. U-15805 and U-15889 (the September 29 order). On April 30, 2010, Consumers filed the present application--with supporting testimony and exhibits--requesting authority to reconcile its EO plan costs and revenues for 2009, in accordance with the provisions of Act 295.

Pursuant to due notice, a prehearing conference was held in the present case on June 6, 2010 before Administrative Law Judge Mark E. Cummins (ALJ). In the course of that prehearing, the ALJ granted intervenor status to the Association of Businesses Advocating Tariff Equity (ABATE) and the Michigan Department of the Attorney General (Attorney General). The Commission Staff (Staff) also participated in the proceedings.

Evidentiary hearings in this matter took place on December 10, 2010. In the course of those hearings, testimony was provided by three utility witnesses and one witness sponsored by the Staff. The resultant record consists of 91 pages of transcript and 18 exhibits, each of which was received into evidence. Pursuant to the schedule established for this case, all of the parties filed briefs on January 5, 2011. Consumers, the Staff, and the Attorney General also filed reply briefs on January 19, 2011.

II.

TESTIMONY AND POSITIONS OF THE PARTIES

As noted earlier, Consumers offered testimony from three witnesses in this proceeding. The first was Terrence J. Mierzwa, the utility's Executive Manager of Marketing, Energy Efficiency & Research. Mr. Mierzwa endeavored to: (1) demonstrate that the company reasonably and prudently administered its gas and electric EO plans in compliance with Act 295; (2) show that Consumers not only met, but exceeded, its

statutory targets for electric and gas energy savings during 2009, as certified by an independent assessment; (3) demonstrate that the utility's gas and electric EO program portfolios each had a benefit/cost ratio in excess of 1.0, again as independently certified and based on the utility system resource cost test--generally referred to as the UCT--mandated by Act 295; and (4) demonstrate the level of EO incentive payment justified by Consumers' actions during 2009, based on the methodology adopted in the September 29 order. See, 2 Tr 20-21.

Mr. Mierzwa began by presenting the utility's Energy Optimization Annual Report, which reviewed Consumers' 2009 EO performance with regard to its seven residential programs, four residential pilots, three business programs, and four business pilots. As noted by this witness, that report detailed the "customer participation levels, investment, energy savings, and cost-effectiveness" for each of those 18 programs. 2 Tr 23. According to that report, the electric and gas energy savings arising from the utility's EO efforts for 2009 "exceeded the statutory targets" established in Cases Nos. U-15805 and U-15889, and "were achieved cost-effectively and within the allowable statutory investment limits." Exhibit A-1, p. 2.

Specifically, Mr. Mierzwa testified that although the target for Consumers' electric EO program was to save 107,939 megawatt-hours (MWh) with a maximum investment of \$25,182,517, the company actually saved 145,118 MWh with an investment of only \$22,157,415. See, 2 Tr 24 and 27 (citing Exhibit A-2). He similarly stated that although the target for the utility's gas EO program was to save 299,623 thousand cubic feet (Mcf) with a maximum investment of \$18,558,235, Consumers actually saved 396,783 Mcf at a cost of only \$15,744,620. See, 2 Tr 26-27 (citing Exhibit A-3).

Moreover, he noted that the actual electric and gas energy savings levels achieved by the utility and cited above were certified by two independent consulting agencies, namely The Cadmus Group, Inc. and Energy Market Innovations, Inc. See, 2 Tr 24-27.

Mr. Mierzwa further testified that analyses jointly performed by two other consultants, Navigant Consulting (Navigant) and the Wisconsin Energy Conservation Corporation (WECC), showed that the company's portfolios of electric and gas EO programs each significantly exceeded "the statutory requirement of a benefit/cost ratio of greater than 1.0 as calculated by the [UCT]," with the electric program portfolio scoring a 4.4 and the gas program portfolio weighing in with a 2.2 UCT score. 2 Tr 29. According to him, the above-mentioned results clearly show that, because it "achieved 134% of its statutory electric savings target with a UCT score of 4.4 and 132% of its statutory gas savings target with a UCT score of 2.2," Consumers has earned incentive payments for both its electric and gas EO programs. Id. Mr. Mierzwa concluded by stating that, as reflected on Exhibit A-7, the incentive payments due for the performance of the utility's 2009 electric and gas EO programs are \$3,323,612 and \$2,361,693, respectively.¹ See, 2 Tr 29-30.

A second witness offered by Consumers, James P. Schwanitz, a Senior Accounting Analyst in the company's Accounting Group, generally supported the above-stated incentive payment figures,² while additionally breaking them down on the basis of customer class. Mr. Schwanitz also presented testimony and exhibits providing "the

¹ As described in Note 4 on Exhibit A-7, the incentive for each of those programs is computed at the maximum of 15% of actual investment when energy savings are greater than or equal to 115% of the statutory target and the UCT score is greater than or equal to 1.25.

² Although Mr. Schwanitz's figures (set forth in Exhibits A-13 and A-16) were slightly higher than Mr. Mierzwa's, he testified that the reason for the difference was that Mr. Mierzwa's incentive calculation includes adjustments to 2009 plan year costs that were actually recorded in 2010. See, 2 Tr 75.

methodology and calculation of the company's accounting process" associated with its electric and gas EO programs. 2 Tr 72. In so doing, he identified the 2009 electric EO surcharge revenues (\$26,576,025) and program costs (\$22,558,380), indicated the cumulative over- and under-recoveries (both by class and in total), computed a total over-recovery of \$4,017,645, and added carrying charges of \$9,919, thus producing a cumulative electric EO program over-recovery of \$4,027,645. See, 2 Tr 72-74 (citing Exhibits A-11 and A-12). Similarly, Mr. Schwanitz identified the 2009 gas EO revenues (\$13,639,775) and costs (\$15,456,220), calculated a net under-recovery of \$1,816,445, and added carrying charges in the amount of \$302, thus producing a cumulative gas EO program under-recovery of \$1,816,143. See, Id., (citing Exhibits A-14 and A-15).

The company's final witness was Benjamin M. Ruhl, a Senior Analyst in its Rates and Business Support Department. Mr. Ruhl provided a comparison of the utility's actual 2009 EO surcharge revenue to the level anticipated in Consumers' Commission-approved plan, described the company's proposed means of recovering all EO-related incentives earned during 2009, and addressed the utility's proposal to establish a more equitable savings target for its large gas transportation customer class. He began by noting that Consumers' EO plan "projected electric EO surcharge collections of approximately \$53 million annually and gas EO surcharge collections of approximately \$38 million annually." 2 Tr 53. However, he further noted that because the plan was only in place during the last 7 months of 2009, the expected collection levels for the year "could be assumed to be 7/12 of the planned annual amount, or \$31 million for the electric program and \$22 million for the gas program." Id. Nevertheless, Mr. Ruhl

pointed out that, due to various factors,³ actual 2009 collections for the electric EO program were \$4.4 million lower than planned (with the company recovering only \$26.6 million) and were \$8.4 million below expectations for the gas EO program (based on actual collections totaling only \$13.6 million). See, 2 Tr. 54-55. Still, because the variations were largely caused by what are expected to be one-time events, he did not recommend any adjustments to the overall electric and gas surcharge levels at this time. See, 2 Tr 55.

Mr. Ruhl went on to recommend that Consumers be allowed to collect its total \$5.7 million financial incentive (\$3.3 million from the electric EO program and \$2.4 million from the gas side) by way of a one-month, prospectively-billed surcharge, set to start with “the first billing cycle of the first month 30 days following the issuance of the Commission’s order approving the amount of the company’s EO program incentive recovery.” 2 Tr 56. He further suggested adding interest to the amounts to be recovered, as reflected in columns (d) and (e) of Exhibits A-8 and A-9. See, 2 Tr 56-57. Finally, Mr. Ruhl addressed what the utility views as an inequitable savings target established for its large gas transportation class. In this regard, he testified that:

The Company requests authority to adjust the incremental energy savings target associated with end use gas transportation customers to reflect the reduced levels of revenues from such customers as compared with full service sales customers, . . . [the concern being] that its transportation class programs are at a disadvantage to achieve the overall statutory saving targets given the limited program spending available for this class. The EO program spending limits are based on the retail sales levels for each customer class. However, unlike the other customer classes, the

³ On the electric side, Mr. Ruhl attributed the differential to an “adjustment of surcharges within the primary customer group that was approved one month into the collection period,” as well as “differences between the actual and forecasted level of sales and customers” that had been used to determine the EO surcharges of each customer group. 2 Tr 54. As for the gas side, he indicated that the shortfall was largely caused by the fact that the seven-month collection period for 2009 fell largely outside the gas heating season, thus suppressing average monthly consumption. See, 2 Tr 55.

retail sales for the transportation class do not include the cost of gas, which is paid to their commodity supplier. Thus, the energy savings target for the transportation class is substantially higher relative to their contribution to the EO revenues that are collected.

* * *

Therefore, the Company proposes that the sales levels to be used in establishing the savings targets be based on a percentage of total transportation sales equal to the percentage of retail sales revenue to total gas transportation revenue including commodity costs.

2 Tr 57-58. In support of this proposal, Mr. Ruhl pointed out that its adoption would parallel the structure approved for Michigan Consolidated Gas Company (Mich Con), which addressed this potential disparity and had it resolved as part of the plan approved by the Commission's June 2, 2009 order in Case No. U-15890. See, 2 Tr 58.

Based on the testimony provided by these three witnesses, Consumers contends that the Commission should approve its 2009 EO plan reconciliation as filed. In support of that contention, the utility asserts that its expenditures for the plan period were both reasonable and prudent, as evidenced by the fact that (1) the company exceeded its statutory energy saving targets for both its electric and gas EO programs, (2) stayed well within the required spending caps for each of those programs, and (3) achieved independently-verified UCT results far in excess of the statutory requirements. As a result, Consumers claims that it is entitled to an incentive payment equal to 15% of its actual electric and gas EO program expenditures for 2009, which totals approximately \$5.7 million. The utility thus proposes to recover that total incentive, plus interest, by imposing one-month surcharges on its electric and gas customers. Finally, Consumers contends that it should be authorized to "prospectively adjust the incremental energy savings target associated with end-use gas transportation customers as compared with full service sales customers." Consumers' initial brief, p. 10.

The Staff offered testimony from a single witness in this proceeding, namely David S. Walker, an Engineer in the Energy Efficiency Section of the Staff's Electric Reliability Division. Although supporting Consumers' request to recover \$3,323,612 and \$2,361,693 in incentives for its electric and gas EO programs, respectively, Mr. Walker testified in opposition to two of the utility's requests related to that recovery. First, he asserted that, because those EO-related financial incentives will not actually exist until the Commission issues an order authorizing their recovery, and because traditional regulatory policy only allows interest to be earned as compensation for costs associated with money borrowed to fund utility operations (which, he noted, is not the case here), "no interest should be earned on the financial incentive [either] before or after the incentive is awarded by the Commission." 2 Tr 89. Second, he took issue with the company's proposal to collect the financial incentive by way of a one-month surcharge.

According to Mr. Walker:

Collecting the surcharge in such a short timeframe results in EO surcharge increases in the range of approximately 59% for residential customers to 84% for the largest primary customer. [The] Staff believes this is an inappropriate increase to customers, especially given the state of the economy, and that the incentive surcharge should be collected over a timeframe of 12 months.

2 Tr 90. Nevertheless, he went on to testify in favor of allowing Consumers to adjust, through the use of a "temporary waiver for 2010," the annual gas savings target established for end-use transportation customers. Id. According to Mr. Walker, the grant of a temporary waiver is justified by the fact that the Commission is currently exploring long-term policy solutions to various gas transportation issues.

Consistent with the testimony provided by Mr. Walker, the Staff recommends that the Commission: (1) approve Consumers' 2009 EO reconciliation; (2) grant the utility a

financial performance award of approximately \$5.7 million; (3) deny the company's request to accrue interest on that award; (4) reject Consumers' request to recover the financial incentive award through the application of a one-month surcharge, and instead spread recovery over a 12-month period following issuance of the Commission's order in this matter; and (5) allow the utility to adjust the gas savings target attributable to end-use gas transportation customers by granting the company a temporary waiver for the 2010 EO plan year.

Although offering no witnesses of its own in this proceeding, ABATE contends--as it has done in several previous cases concerning the implementation of EO programs--that the Commission misinterpreted Act 295 by concluding that, despite the fact that end-use gas transportation customers purchase no gas directly from Consumers, they should still be subject to gas EO plan surcharges. See, ABATE's initial brief, p. 2. Similarly, ABATE reasserts its claim that Consumers' electric EO plan "calls for [the] overbuilding of wind power plants at too high of a price, thereby causing EO plan surcharges to be too high." Id. Finally, although continuing to believe that ratepayers "should not be charged to support an award to the utility for complying with Act 295," ABATE supports the Staff's position that no interest should be allowed on any such award and that its collection should be spread over a 12-month period.

For his part, the Attorney General (who, like ABATE, did not offer any witnesses in this case) agrees with the Staff that Consumers' electric and gas EO reconciliation for the 2009 plan year should be accepted. In doing so, however, he asserts that the calculations supporting the utility's case (particularly with regard to billed sales levels) were poorly explained, and that the company's proofs concerning the reasonableness

and prudence of its reported EO expenses were both overly subjective and conclusory. See, Attorney General's initial brief, pp. 7-9. As a result, he recommends that the Commission order Consumers to "present more complete calculations and explanations of EO revenues and expenses" reported in future EO reconciliation cases, as well as a "more complete explanation of why actual expenses were reasonably and prudently incurred." Id., p. 12. The Attorney General further agrees with the Staff that all interest should be excluded from the utility's calculation of recoverable financial incentives, and that recovery of the approved EO incentive should be spread over 12 months (as opposed to the one-month surcharge period requested by the company). See, Id., pp. 9-10. Next, he contends that the surcharge arising from the EO incentive should be allocated to customers based solely upon their respective shares of historical 2009 energy consumption. See, Id., p. 10. Finally, the Attorney General indicates that he does not object to the Staff's proposal to grant the company "a temporary, 2010 waiver for calculating energy savings targets for large transportation customers." Id., p. 11.

III.

DISCUSSION AND FINDINGS

No significant dispute exists regarding Consumers' right to recover \$3,323,612 and \$2,361,693, respectively, in financial incentives arising from the performance of its 2009 electric and gas EO programs. Specifically, the testimony offered by the utility's witnesses and outlined above shows that: (1) Consumers greatly exceeded both its electric savings target of 107,939 MWh and its gas savings target of 299,623 Mcf for 2009 [having actually saved 145,118 MWh and 396,738 Mcf, respectively]; (2) those

energy savings, certified by two independent consulting agencies, were achieved by spending significantly less than the Commission-approved EO program investment limits; and (3) independent analyses performed by Navigant and WECC show that the UCT scores recorded for Consumers' gas and electric EO programs were from two to four times higher than the required 1.0 cost/benefit ratio mandated by Act 295. No testimony to the contrary was offered by the other parties, either to contradict the calculation of these incentive levels or to show that the utility's actions with regard to its 2009 EO programs were anything other than reasonable and prudent. As a result, the ALJ finds that Consumers' 2009 EO reconciliation regarding both its electric and gas programs should be approved, and that recovery of the total \$5,685,305 financial incentive suggested by the company and supported by the other various parties should be authorized by the Commission.

With respect to the Attorney General's request that Consumers be ordered to provide--in all of its future EO reconciliation case filings--more complete calculations and explanations of actual EO revenues and expenses, as well as a more thorough explanation concerning the reasonableness and prudence of all expenses incurred, the ALJ finds no reason (based on the record assembled in this proceeding) to recommend such action. In the course of his testimony, Mr. Mierzwa sponsored, as Exhibit A-1, the company's 2009 Annual Report concerning its overall EO program. As correctly noted by Consumers:

[That document] is a 132 page comprehensive report that reviews the Company's 2009 EO performance on seven residential programs, four residential pilots, three business programs, four business pilots, and a self-direct option for large business customers. The report details customer participation levels, investment, energy savings, and cost-effectiveness results for each program. 2 Tr 23. The statutory requirement

[for the utility's electric EO program] was 107,939 MWh as established in Cases Nos. U-15805/U-15889 and shown on Exhibit A-2 (TJM-2), line 24, column (6). The Company actually achieved 145,118 MWh of savings as shown on line 24, column (4) of that exhibit, which is 134% of the statutory requirement. 2 Tr 24. Consumers Energy successfully implemented the Company's 2009 electric EO plan in 2009, including targeted low-income residential programs. There is no record evidence challenging any of these factual conclusions.

The Company also exceeded its 2009 gas energy savings target as prescribed by [Act 295]. The statutory requirement was 299,623 Mcf as established in Cases Nos. U-15805/U-15889 and shown on Exhibit A-3 (TJM-3), line 23, column (6). The Company actually achieved 396,783 Mcf of savings as shown on line 23, column (4) of that exhibit, which is 132% of the statutory requirement. 2 Tr 26. There is no evidence challenging these factual conclusions.

Consumers' reply brief, pp. 4-5. Moreover, the record indicates that the above-noted energy savings were achieved in a cost-effective manner. Specifically, although the 2009 spending cap established for the utility's electric EO program was \$25,182,517, the 145,118 MWh of savings was achieved through the actual expenditure of only \$22,157,415. See, 2 Tr 27. Similarly, despite a spending cap of \$18,558,235 for the company's gas EO program, the 396,783 Mcf of savings required actual expenditures of only \$15,744,620. See, Id. Finally, and as noted earlier in this proposal for decision (PFD), the cost/benefit analyses performed by two independent consultants--namely, Navigant and WEEC--resulted in UCT scores well in excess of the statutory requirement of 1.0. See, 2 Tr 27-29 [citing Exhibit A-1, Tables 4.6 and 4.7]. The ALJ thus finds that, because more than enough proof was presented to explain Consumers' calculations and support a finding of reasonableness and prudence, the Commission should reject the Attorney General's request for additional information in all future cases.

Nevertheless, the ALJ agrees with the Staff, the Attorney General, and ABATE that no interest should be added to the \$5.7 million incentive payment discussed above.

Mr. Walker correctly pointed out that, although the financial incentive mechanism was approved for use by way of the September 29 order, the award itself will not actually exist until the Commission issues its decision in this proceeding. See, 2 Tr 89. As such, no interest can be said to accumulate prior to that order's issuance. Moreover, although Consumers contends that it should at least receive interest to reflect the lost time-value of money from the date of the Commission's order in this case until the entire incentive has been recovered from ratepayers, Mr. Walker also accurately noted that:

[T]raditional regulatory policy allows interest to be earned as compensation to a utility for costs associated with borrowing money to fund utility operations. A financial incentive, by its very nature, is not a cost incurred by the utility. Therefore, no interest should be earned on the financial incentive, [either] before or after the incentive is awarded by the Commission.

Id. This conclusion is supported by three additional factors. First, Consumers failed to cite a single case in which the Commission has awarded interest on a performance bonus. Second, as asserted by the Attorney General, Section 75 of Act 295 limits the total amount of any financial incentive arising from a utility's EO program to the lesser of two specified calculations, and "the statute does not provide for the addition of interest to those incentive amounts." Attorney General's reply brief, p. 2 [citing MCL 460.1075]. Third, the Commission has consistently ruled that it is not appropriate for a utility to collect interest on any financial incentive granted in the context of an EO reconciliation case. See, the February 8, 2011 order in Case No. U-16289, at p. 8; See also, the February 8, 2011 order in Case No. U-16358, at pp. 11-12. For all of these reasons, the ALJ recommends rejecting Consumers' request for interest of any nature in the context of this case.

The ALJ also agrees with the Staff, the Attorney General, and ABATE that recovery of the \$5.7 million incentive earned as a result of the utility's 2009 electric and gas EO programs should be accomplished through the application of a 12-month surcharge, as opposed to the utility's proposed one-month surcharge. While the utility is correct in noting that any one-month EO incentive surcharge would be relatively small in comparison to a customer's total monthly bill, the fact remains that collecting the entire incentive over such a short period would, as pointed out by Mr. Walker, "[result] in EO surcharge increases in the range of 59% for residential customers to 84% for the largest primary customer." 2 Tr 90. Moreover, it bears noting that for Mich Con--which had been awarded a financial incentive of \$913,374--and The Detroit Edison Company--which was granted a \$3,008,829 incentive award--each utility was directed to recover those EO-related sums over a 12-month period. See, the Commission's February 8, 2011 order in Case No. U-16289, at p. 9, as well as its February 8, 2011 order in Case No. U-16358, at p. 13. For the sake of consistency with other utilities, and to keep the overall EO surcharge applied to each of Consumers' customer classes from jumping significantly from one month to another, the ALJ recommends that the Commission again direct the incentive to be recovered over the 12-month period beginning with the utility's next billing cycle following issuance of the final order in this case.

Next, we turn to the Attorney General's request to allocate the EO incentive surcharge based exclusively upon each customer's 2009 electric and gas usage. On its face, this seems to be a logical request, as it would appear to "allocate the historically calculated incentive costs on the same historical reconciliation basis" used for actual EO

costs incurred during 2009. Attorney General's initial brief, p. 11. Nevertheless, and as correctly noted by Consumers, such an allocation methodology would be inappropriate in this particular circumstance. As pointed out by the utility, "EO surcharges are billed according to statutorily imposed guidelines, not simply by consumption." Consumers' reply brief, p. 6. Specifically, although electric residential EO surcharges and all gas EO surcharges are billed on a monthly per KWh and per Mcf basis, respectively, that is not the case for electric commercial and industrial class members. Rather, the electric EO surcharge applied to those customers is actually imposed on a "per customer *billing meter* basis." Id. Thus, the theory underlying the Attorney General's proposal (namely, that the total of each customer's surcharges multiplied by its historical consumption would yield a number identical to the actual EO revenues being reconciled in this case) is flawed. The ALJ therefore finds that the company's allocation approach to be preferable, and recommends that the Commission reject the Attorney General's requested methodology.

Finally, the ALJ finds that ABATE's claims to the effect that Consumers' EO plan calls for overbuilding wind generation plants at an excessive price, and that large gas transportation customers should be excluded from the EO process altogether, should also be rejected. With regard to its assertions regarding wind generation, ABATE offered no proof whatsoever to the effect that the proposed wind power facilities were either too large in number or too costly as compared to other sources of electrical generation. Furthermore, it appears that any such proof (had it actually been presented) would be relevant only in an EO plan case, as opposed to the current reconciliation proceeding. As for ABATE's contention that gas transportation customers

should be fully exempt from EO programs and their attendant surcharges, the Commission has both reviewed and rejected that claim on several occasions. See, i.e., the Commission's December 4, 2008 and February 3, 2009 orders in Case No. U-15800, as well as its February 8, 2011 orders in both Case No. U-16289 and Case No. U-16358. As a result, the ALJ recommends that the Commission reject ABATE's claims concerning these two issues.

Having disposed of all hotly-contested issues, there remains one matter to be addressed by the Commission which has engendered only a modicum of disagreement among the parties. Specifically, Consumers has requested permission to "modify the calculation of the gas minimum [EO] savings targets for 2010 and thereafter for large gas transportation customers." Consumers' initial brief, p. 10. As noted earlier in the PFD, the utility seeks authority to prospectively adjust the incremental energy savings target for its end-use gas transportation customers to better reflect the lower level of revenue received from this customer class as compared to full-service customers. As stated by Mr. Ruhl, "the Company is concerned that its transportation class programs are at a disadvantage to achieve the overall statutory saving targets given the limited program spending available for this class," due to the fact that (1) EO spending limits are based on the retail sales levels for each customer class, and (2) transportation-only customers' retail sales figures do not include the cost of gas. 2 Tr 57. As a result, Consumers suggests that the sales levels to be used in setting future EO savings targets for 2010 through 2014 "be based on a percentage of total transportation sales equal to the percentage of retail sales revenue to total gas transportation revenue including commodity costs." Consumers' initial brief, p. 11.

Both the Staff and the Attorney General have indicated that they are agreeable to letting Consumers adjust the energy savings target for its end-use transportation customers, albeit only with regard to the 2010 plan year (as opposed to the entire 2010-2014 period). See, Staff's initial brief, p. 5, and Attorney General's initial brief, p. 11. According to Mr. Walker, the justification for granting only a one-year waiver is the fact that "the Commission is exploring long-term policy solutions to the gas transportation issue." 2 Tr 90. Consumers has not explicitly opposed the temporary waiver suggested by those two parties, and ABATE has not specifically weighed-in on the issue. Because the ALJ finds the "go slow" course suggested by the Staff's witness and supported by the Attorney General to be the most reasonable course to follow (at least in light of the Commission's apparent desire to establish an industry-wide framework for setting savings targets for end-use transportation customers), and also because of Consumers' election not to directly oppose such a path, it is recommended that the Commission grant the utility a temporary waiver for the 2010 EO plan year when calculating energy savings for that particular group of gas customers.

IV.

CONCLUSION

Based on the foregoing, the ALJ recommends that an order be issued adopting the findings and conclusions set forth above. Specifically, it is recommended that the Commission: (1) find that Consumers' 2009 EO reconciliation regarding both its electric and gas programs should be approved, and that recovery of the total \$5,685,305 financial incentive suggested by the utility and supported by the other various parties

should be authorized; (2) reject the Attorney General's proposal to require Consumers to file, in all future reconciliation cases, more complete calculations of its EO revenues and expenses, as well as a more thorough explanation regarding the reasonableness and prudence of all EO-related expenditures; (3) not allow the company to collect any interest on the approximately \$5.7 million incentive award arising from operations undertaken during the 2009 EO plan year; (4) authorize Consumers to recover its incentive award through the application of a 12-month surcharge, as opposed to a one-month surcharge; (5) adopt the utility's proposed incentive award allocation methodology; (6) reject ABATE's claims regarding the scope and cost of Consumers' proposed wind generation program, as well as ABATE's renewed request to fully exclude large gas customers from the EO process; and (7) grant the company a temporary waiver, applicable to its 2010 EO plan year, regarding the calculation of the energy savings target applicable to its end-use gas transportation customer class.

Finally, it should be noted that any arguments or potential issues not specifically addressed in this PFD were deemed to be irrelevant to the ALJ's ultimate findings and conclusions.

STATE OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

Mark E. Cummins
Administrative Law Judge

March 31, 2011
Lansing, Michigan
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